

## § 76.1508

programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with Section 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

### § 76.1508 Network non-duplication.

(a) Sections 76.92 through 76.97 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.92 that refers to a “cable community unit” or “community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of § 76.92 that refers to a “cable television community” shall apply to an open video system community. Any provision of § 76.92 that refers to a “cable television system’s mandatory signal carriage obligations” shall apply to an open video system’s mandatory signal carriage obligations.

(c) Any provision of § 76.94 that refers to a “cable system operator” or “cable television system operator” shall apply to an open video system operator. Any provision of § 76.94 that refers to a “cable system” or “cable television system” shall apply to an open video system except § 76.94 (e) and (f) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding the exercise of network non-duplication rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

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(d) Any provision of § 76.95 that refers to a “cable system” or a “cable community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

### § 76.1509 Syndicated program exclusivity.

(a) Sections 76.151 through 76.163 shall apply to open video systems in accordance with the provisions contained in this section.

(b) Any provision of § 76.151 that refers to a “cable community unit” shall apply to an open video system.

(c) Any provision of § 76.155 that refers to a “cable system operator” or “cable television system operator” shall apply to an open video system operator. Any provision of § 76.155 that refers to a “cable system” or “cable television system” shall apply to an open video system except § 76.155(c) which shall apply to an open video system operator. Open video system operators shall make all notifications and information regarding exercise of syndicated program exclusivity rights immediately available to all appropriate video programming provider on the system. An open video system operator shall not be subject to sanctions for any violation of these rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program once it was notified of a violation.

(d) Any provision of § 76.156 that refers to a “cable community” shall apply to an open video system community. Any provision of § 76.156 that refers to a “cable community unit” or “community unit” shall apply to an open video system or that portion of an open video system that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). Any provision of §§ 76.156

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through 76.158, and 76.163 that refers to a “cable system” shall apply to an open video system.

(e) Any provision of § 76.159 that refers to “cable television” or a “cable system” shall apply to an open video system.

(f) Any provision of § 76.161 that refers to a “community unit” shall apply to an open video system or that portion of an open video system that is affected by this rule.

### § 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems: §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); § 76.611 (signal leakage restrictions); § 76.1803 and 76.1804 (signal leakage monitoring and aeronautical frequency notifications); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

[69 FR 57862, Sept. 28, 2004]

### § 76.1511 Fees.

An open video system operator may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted under Section 622 of the Communications Act. Local governments shall have the authority to assess and receive the gross revenue fee. Gross revenues under this paragraph means all gross revenues received by an open video system operator or its affiliates, including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming providers. In addition gross revenues under this paragraph includes any advertising revenues received by an open video system operator or its affiliates in connection with the provision of video pro-

gramming, where such revenues are included in the calculation of the incumbent cable operator’s cable franchise fee. Gross revenues does not include revenues collected by unaffiliated video programming providers, such as subscriber or advertising revenues. Any gross revenues fee that the open video system operator or its affiliate collects from subscribers or video programming providers shall be excluded from gross revenues. An operator of an open video system or any programming provider may designate that portion of a subscriber’s bill attributable to the fee as a separate item on the bill. An operator of an open video system may recover the gross revenue fee from programming providers on a proportional basis as an element of the carriage rate.

[61 FR 43177, Aug. 21, 1996]

### § 76.1512 Programming information.

(a) An open video system operator shall not unreasonably discriminate in favor of itself or its affiliates with regard to material or information (including advertising) provided by the operator to subscribers for the purpose of selecting programming on the open video system, or in the way such material or information is provided to subscribers.

NOTE TO PARAGRAPH (a): “Material or information” as used in paragraph (a) of this section means material or information that a subscriber uses to actively select programming at the point of program selection.

(b) In accordance with paragraph (a) of this section:

(1) An open video system operator shall not discriminate in favor of itself or its affiliate on any navigational device, guide or menu;

(2) An open video system operator shall not omit television broadcast stations or other unaffiliated video programming services carried on the open video system from any navigational device, guide (electronic or paper) or menu;

(3) An open video system operator shall not restrict a video programming provider’s ability to use part of the provider’s channel capacity to provide an individualized guide or menu to the provider’s subscribers;